

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA)

and)

the STATE OF SOUTH DAKOTA,)

Plaintiffs,)

v.)

COCA MINES, INC.)

and)

THOMAS E. CONGDON,)

Defendants.)

CASE NO. 5:16-CV-5022-JLV

**UNOPPOSED MOTION TO ENTER
[PROPOSED] CONSENT DECREE**

UNOPPOSED MOTION TO ENTER [PROPOSED] CONSENT DECREE

The United States on behalf of the Plaintiffs, with the consent of CoCa Mines, Inc. and Thomas E. Congdon (“Defendants”), hereby moves this Court to enter the proposed Consent Decree attached to the Notice of Lodging of [Proposed] Consent Decree in the above-captioned case. In support of this motion, the Plaintiffs state as follows:

1. On April 14, 2016, the Plaintiffs filed a Complaint pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental, Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607(a) and 9613(g)(2), against the Defendants for the recovery of response costs related to the cleanup at the Gilt Edge Mine Superfund Site (“Site”) in Lawrence

County, South Dakota.

2. On April 15, 2016, the Plaintiffs lodged a proposed Consent Decree that would resolve the violations against the Defendants alleged in the Complaint.

3. The Consent Decree requires that the Defendants pay a combined \$10.3 million in cash, with CoCa Mines, Inc. paying up to an additional \$700,000 in future insurance recovery. The money will be used to help pay for response costs related to the cleanup at the Site.

4. After the Complaint was filed and the proposed Consent Decree was lodged with the Court, the United States published notice of the proposed settlement in the Federal Register, 81 Fed. Reg. 80 at 24644 (April 25, 2016), and public comments were solicited in accordance with Department of Justice policy, 28 C.F.R. § 50.7, and the proposed Consent Decree. The notice described the principal terms of the settlement and provided an opportunity to comment on the Consent Decree. No comments were received during the comment period.

5. The Consent Decree is fair, reasonable, in the public interest, and consistent with the purposes of CERCLA. See E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d 884, 889 (7th Cir. 1985); Conservation Law Found. v. Franklin, 989 F.2d 54, 58 (1st Cir. 1993); United States v. Oregon, 913 F.2d 576, 580 (9th Cir. 1990); United States v. Cannons Eng'g Corp., 899 F.2d 79, 85 (1st Cir. 1990); United States v. Jones & Laughlin Steel Corp., 804 F.2d 348, 351 (6th Cir. 1986).

6. Moreover, the settlement resolves the case against these Defendants without further litigation and saves substantial time and resources for the parties and the Court. See Securities Exch. Comm'n v. Randolph, 736 F.2d 525, 528 (9th Cir. 1984); United States v. City of Jackson, 519 F.2d 1147, 1151 (5th Cir. 1975).

7. Pursuant to the terms of the settlement, Plaintiffs and the Defendants consent to entry of the Consent Decree to resolve the alleged violations in the Complaint, and to avoid further litigation between the parties.

WHEREFORE, the United States on behalf of the Plaintiffs respectfully requests this Court to sign the Consent Decree that was lodged on April 15, 2016 and attached to the Notice of Lodging of [Proposed] Consent Decree, and enter the Consent Decree as a final judgment.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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